

**CALIFORNIA DEPARTMENT OF JUSTICE**

**TITLE 11. LAW**

**DIVISION 1. ATTORNEY GENERAL**

**CHAPTER 23. CONFIRMATION OF INDIVIDUALS DESIGNATED BY A PUBLIC OR PRIVATE AGENCY AS A CUSTODIAN OF RECORDS**

**FINAL STATEMENT OF REASONS**

**UPDATE OF INITIAL STATEMENT OF REASONS**

On September 8, 2023, the Department of Justice (DOJ) published an Initial Statement of Reasons to explain modifications to these regulations as originally proposed and the reasons for those modifications. These regulations were modified as follows:

**Article 1. General**

**§ 999.600. Definition of Key Terms.**

Subdivision (c) was non-substantively amended to include a comma after “(a).” This amendment is necessary for grammatical purposes.

**Article 2. Application for Confirmation as a Custodian of Records**

**§ 999.601. Application for Confirmation.**

Subdivision (a) was amended to include the updated revision date for the Custodian of Records Application for Confirmation, BCIA 8374.

Subdivision (b) was amended to include the updated revision date for the Custodian of Records Application for Confirmation, BCIA 8374 and the Request for Live Scan Service, BCIA 8016CUS.

**Article 3. Custodian of Records Confirmation**

**§ 999.602. Confirmation by the Department.**

Subdivision (a) was non-substantively amended to remove “applicant’s” in reference to the application. This amendment was necessary for grammatical purposes.

**§ 999.604. Non-Transferability of Confirmation.**

This section was amended to include the updated revision date for the Custodian of Records Application for Confirmation, BCIA 8374.

**BCIA 8374.**

This form was revised as indicated below and given a new revision date of “01/2024.”

This form was revised to include “Work” in the “Email” field, to clarify that a business email should be provided on this application. This revision is necessary to help reduce the number of requests received from Custodian of Records asking to change their email once they have been given access to the secure web-portal. It also helps to ensure the security and access to criminal offender record information is not as easily accessible through a personal email or information system.

Question 3 was revised to replace “give details below” with “disclose the date and state of arrest, whether the arrest was for a felony or misdemeanor, whether you are awaiting adjudication, and the status of your case.” This revision is necessary to elaborate on the details that should be given when an applicant answers “Yes.” The answers to these questions help determine if the applicant possesses the honesty, credibility, truthfulness, and integrity pursuant to Penal Code section 11102.2, subdivision (e).

Question 5 was revised to replace “give details below” with “disclose the date, licensing agency, underlying circumstances, and disposition.” This revision is necessary to elaborate on the details that should be given when an applicant answers “Yes.” The answers to these questions help determine if the applicant possesses the honesty, credibility, truthfulness, and integrity pursuant to Penal Code section 11102.2, subdivision (e).

Question 6 was revised to replace “give details below” with “disclose the date, court, case number, underlying circumstances, damages, and disposition.” This revision is necessary to elaborate on the details that should be given when an applicant answers “Yes.” The answers to these questions help determine if the applicant possesses the honesty, credibility, truthfulness, and integrity pursuant to Penal Code section 11102.2, subdivision (e).

Question 7 was revised to replace “give details below” with “disclose the date, court, case number, underlying circumstances, and the amount of money judgment, including restitution.” This revision is necessary to elaborate on the details that should be given when an applicant answers “Yes.” The answers to these questions help determine if the applicant possesses the honesty, credibility, truthfulness, and integrity pursuant to Penal Code section 11102.2, subdivision (e).

#### **BCIA 8016CUS.**

This form was revised as indicated below and given a new revision date of “01/2024.”

The Privacy Notice was non-substantively amended to correct the reference to Family Code section 8720 from 87200.

#### **Article 4. Procedures for Denial of an Application or Revocation of an Existing Custodian of Records Confirmation; Request for Reconsideration; and Administrative Hearing**

### **§ 999.605. Denial of an Application or Revocation of an Existing Custodian of Records Confirmation.**

This section was substantively amended to include a comma after “revoked.” This amendment is necessary for grammatical purposes.

### **§ 999.606. Request for Reconsideration.**

This section was substantively amended to include a comma after “denial.” This amendment is necessary for grammatical purposes.

## **SUMMARY OF COMMENTS AND DOJ RESPONSES**

DOJ received one comment during the initial 45-day comment period which occurred from September 8, 2023, through October 24, 2023. DOJ received 103 written comments during the 15-day comment period which occurred from February 20, 2024, through March 7, 2024.

During the 45-day comment period, from September 8, 2023, through October 24, 2023, DOJ received the following comment:

- “[I]t might be helpful to update the language to consistently recognize that counties may have more than one Custodian. Example: ...on individuals designated by applicant agencies to serve as a Custodian of Records... The agency Custodian(s) of Record will be responsible for the security, storage, dissemination, and destruction...

On pg 6 of the Initial Statement of Reasons, should there be a reference to whomever is the LiveScan operator taking the fingerprints needs to have an FPC number already issued by the DOJ?”

**DOJ Response:** No change has been made in response to this comment. The proposed regulations specify the application process for the Custodian of Records confirmation program, including appeal procedures related to denied or revoked confirmations, and are applicable to any Custodian of Records. The FPC (Fingerprint Roller Certificate) number is not part of, nor applicable to, the Custodian of Records confirmation process.

During the 15-day comment period, from February 20, 2024, through March 7, 2024, DOJ received the following comments:

- **Comment 1 (Woolsey, Janice):** “I just wanted to say that I support all proposed changes.”

**DOJ Response:** The DOJ has made no changes in response to this comment.

- **Comment 2 (Cuny, Theresa):** “Current wording states: (c) The applicant shall submit a check or money order in the amount of thirty dollars (\$30) to cover the costs of the confirmation program, made payable to ‘Department of Justice.’

I would like to propose an addition to the end of this sentence to include being able to charge the agency by including the agency billing number on the application. This change would assist agencies not having to reimburse their CORs money and/or writing out money orders. It will expedite the process in getting a COR person fingerprinted as such.”

**DOJ Response:** No change has been made in response to this comment. The Request for Live Scan Service, BCIA 8016CUS has a Billing Number field.

- **Comment 3 (Villa, Andrea):** “Can you explain this cost further please? .... I am unaware as to how the \$30 fee mentioned in Article 2, item (c) correlates to what we have been charged for in the past. ...Background checks are billed to our billing code ... and upon receipt of the invoice, we pay for the charges. Will this option no longer be available to us?”

**DOJ Response:** No change has been made in response to this comment. The fee schedule for the Custodian of Records confirmation will not be changing as a result of the proposed regulations. This fee is separate from any other fees applicable to agencies conducting licensure or employment background checks.

- **Comment 4 (King, Kayley):** “For a change in an existing COR designee, ... is an email a current requirement, or can the update/edit function on the AAJC website serve the same purpose? Is the submission of Form BCIA 8374 required, or can the update/edit function on the AAJC website serve the same purpose?”

When adding new CORs consistent with personnel changes... how is that information communicated to the COR group for confirmation and exemption for a duplicate fingerprint submission?

Every two years, our employees are required to complete CLETS Nextest training; however, we are listed in the system by serial number and not by name. Is there a way to merge our existing profiles with any new COR designee’s profile?”

**DOJ Response:** No change has been made in response to this comment. This comment is related to current Custodian of Records processes and system functionality, rather than the text of the regulations. Changes to existing CORs may be submitted through the Applicant Agency Justice Connection (AAJC) portal. The submission of the BCIA 8374 is required for every Custodian of Records and does not serve the same purpose as the update/edit function in the AAJC portal.

At the time a Custodian of Records application is reviewed, the DOJ analyst will confirm whether the background requirements of this section have been met by criminal justice agency personnel.

Each applicant agency Custodian of Records is granted administrative account privileges within the CJIS Online training platform. Administrative account privileges allow a Custodian of Records to assign security awareness training to their agency's administrative personnel and manage their training records for compliance purposes. Criminal justice agencies may demonstrate compliance through completion of nexTEST or CJIS Online training. A copy of nexTEST certification is required and recertification every two years is based upon the nexTEST certification date.

- **Comment 5 (Larsen, Bryan):** "...I know the City's HR department receives DOJ information for potential employees while in the hiring/background process. Would they need to designate a COR and ensure that person complies with PC 11102.2?"

**DOJ Response:** No change has been made in response to this comment. Penal Code section 11102.2 requires every agency to designate at least one Custodian of Records. An Employee Statement form must be signed by all agency personnel with access to criminal offender record information for hiring purposes, and retained on file by the agency Custodian of Records.

- **Comment 6 (Nunes, Karen):** "...[O]n the Request for Live Scan Service form the ORI and Mail Codes are different from what I know."

**DOJ Response:** No change has been made in response to this comment. The ORI and Mail Code on the BCIA 8016CUS contain the DOJ's ORI and Mail Code. This differs from the agency's ORI and Mail Code that will be used when an agency fingerprints their own applicants.

- **Comment 7 (THE PAC):** "Do we mail in our forms or submit them here?"

**DOJ Response:** No change has been made in response to this comment. DOJ interprets this to be a question about the submission of the BCIA 8374, and the BCIA 8374 provides this information.

- **Comment 8 (Yerovam, Nitzan):** "Also, could you please remind me the process of getting my employees fingerprinted? Step by step to how I can get my agency forms on your system?"

**DOJ Response:** No change has been made in response to this comment. This comment relates to the current fingerprinting process for authorized applicant agencies. Detailed instructions can be found online at: <https://oag.ca.gov/fingerprints/agencies>.

- **Comment 9 (Adventure Recreation):** "We recently had a change in our COR and want to be sure we have completed everything needed."

**DOJ Response:** No change has been made in response to this comment. While this comment was received during the 15-day comment period, it does not concern the current regulations package and relates to a current Custodian of Records request.

- **Summary of Comments 10-103:** Do these regulations impact existing Custodians of Records?

**DOJ Response:** Once the regulations and forms are finalized and approved, they will be used for all new Custodian of Records applicants. Current Custodian of Records will not need to reapply using the proposed forms.

### **LOCAL MANDATE DETERMINATION**

The proposed regulation does not impose any mandate on local agencies or school districts.

### **ALTERNATIVES DETERMINATIONS**

In accordance with Government Code section 11346.9, subdivision (a)(4), DOJ has determined that no alternative it considered, or that it otherwise identified, or was brought to its attention, would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

This determination is based on the fact that the authorizing statute requires an application process for DOJ's Custodian of Records confirmation program, and DOJ minimized the information and the forms that it prescribed to be used when applying for Custodian of Records confirmation as required by statute.

### **ALTERNATIVES THAT WOULD LESSEN ADVERSE ECONOMIC IMPACT ON SMALL BUSINESSES**

DOJ determines that the proposed regulations do not affect small businesses because the mandate on small businesses to designate a Custodian of Records is set by statute (Penal Code section 11102.2). These regulations only specify the application process for DOJ's Custodian of Records confirmation program, including appeal procedures related to denied or revoked confirmations.

### **DOCUMENTS INCORPORATED BY REFERENCE**

1. Custodian of Records Application for Confirmation, BCIA 8374, orig. 01/2024 (see subdivision (a) of section 999.601)
2. Request for Live Scan Service, BCIA 8016CUS, orig. 01/2024 (see subdivision (b) of section 999.601)
3. Applicant Fingerprint Form, FD-258 (Rev. 11-1-20) 1110-0046 (see subdivision (b) of section 999.601)

The above forms are incorporated by reference because it would be cumbersome, unduly expensive, or otherwise impractical to publish the forms in the California Code of Regulations.

During the rulemaking proceeding, the forms were made available upon request, and were available for viewing on DOJ's website.

**NON-DUPLICATION**

Some of the regulations may repeat or rephrase, in whole or in part, a state or federal statute or regulation. This was necessary to satisfy the clarity standard set forth in Government Code section 11349.1, subdivision (a)(3).